



Federal Communications Commission  
Washington, D.C. 20554

April 30, 2007

**DA 07-1942**  
*In Reply Refer to:*  
1800B3-TSN  
Released: April 30, 2007

Ms. Teresa Prieto  
239 Ezzard Street  
Lawrenceville, GA 30045

In re: **AM Broadcast Auction No. 84**

**Teresa Prieto**  
WPLO(AM), Grayson, Georgia  
Facility ID No. 8066  
File No. BMJP-20041029AEY

**Application for Major Modification to  
AM Broadcast Station**

Dear Ms. Prieto:

This letter refers to the above-noted application, filed October 29, 2004, by Teresa Prieto ("Prieto"), for major modification to the facilities of station WPLO(AM), Grayson, Georgia, seeking to change the community of license from Grayson to Lawrenceville, Georgia. For the reasons set forth below, we dismiss the application.

**Background.** Prieto timely filed her FCC Form 175 application to change the WPLO(AM) community of license during the filing window for AM Auction No. 84 ("Auction 84").<sup>1</sup> The application was determined not to be mutually exclusive with any other proposal filed in the Auction 84 filing window, and Prieto was invited to file her complete FCC Form 301 application by October 29, 2004.<sup>2</sup> Prieto timely filed her complete FCC Form 301 application on October 29, 2004. Prieto proposes only a change in community of license, with no change to the WPLO(AM) technical facilities. Prieto was thereafter instructed to submit an amendment addressing the implications of the proposed community change under Section 307(b) of the Communications Act of 1934, as amended, which directs the Commission to make a "fair, efficient, and equitable" distribution of radio service among communities in the United States.<sup>3</sup> Prieto timely filed her Section 307(b) amendment on July 13, 2005.

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<sup>1</sup> See *AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze*, Public Notice, 18 FCC Rcd 23016 (MB/WTB 2003).

<sup>2</sup> See *AM Auction No. 84 Singleton Applications*, Public Notice, 19 FCC Rcd 16655 (MB 2004).

<sup>3</sup> 47 U.S.C. § 307(b). See *Section 307(b) Amendment Deadline Established for Certain AM Auction No. 84 Singleton Applications*, Public Notice, 20 FCC Rcd 10710 (MB 2005).

WPLO(AM) is the sole local transmission service licensed at Grayson, Georgia (2000 Census population 765). Prieto proposes to change WPLO(AM)'s community of license to Lawrenceville, Georgia (2000 Census population 22,397) as that community's first local radio transmission service. Prieto's Section 307(b) analysis indicates that Grayson will continue to receive protected service<sup>4</sup> from at least five stations.<sup>5</sup>

**Discussion.** Our policies on allowing broadcast stations to change their communities of license are based on Section 307(b) and the goals of fair, efficient, and equitable distribution of radio service that underlie it. Our *FM Assignment Policies* delineate three core priorities: provision of first aural reception service to a community, provision of second aural reception service to a community, and provision of first local transmission service at a community.<sup>6</sup> The fourth priority is "other public interest matters," which encompasses any other factors that the Commission may take into consideration.<sup>7</sup> Retention of the first local service at Grayson, and the institution of first local service at Lawrenceville, implicate Priority (3) – first local transmission service. However, notwithstanding that the existing and proposed arrangements of stations both trigger the same allotment priority, the Commission prohibits the removal of an existing station representing a community's sole local transmission service.<sup>8</sup> This policy is subject, as are all Commission policies, to waiver under appropriate circumstances.<sup>9</sup> However, the Commission has emphasized that "the fact that a proposal would create a new local service (at the expense of an existing

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<sup>4</sup> 5mV/m for AM stations and 3.16 mV/m (70 dBμ) for FM stations.

<sup>5</sup> Prieto lists two AM and six FM stations other than WPLO(AM) currently providing protected service to Grayson, Georgia: WSB(AM) and WABE(FM), both licensed at Atlanta, Georgia; WBTS(FM) and WFOX(FM), both licensed at Gainesville, Georgia; WCNN(AM), North Atlanta, Georgia; WFSH-FM, Athens, Georgia; WBTS(FM), Doraville, Georgia; and WLKQ-FM, Buford, Georgia. The Commission has determined that a community receiving service from at least five stations is abundantly served. *See Family Broadcasting Group*, Decision, 93 FCC2d 771 (Rev. Bd. 1983), *review denied*, FCC 83-559 (Nov. 29, 1983); *see also LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (MMB 1995).

<sup>6</sup> *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88, 91-93 (1982). Priorities (2) and (3) are co-equal. The FM allotment priorities are applied to Section 307(b) determinations for community change proposals for AM stations. *Allesandro Broadcasting Co.*, Decision, 99 FCC2d 1 (Rev. Bd. 1984).

<sup>7</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC2d at 93.

<sup>8</sup> *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) ("*New Community R & O*"), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7097 (1990) ("*New Community MO&O*"). The Commission re-affirmed this policy in *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14227-30 (2006).

<sup>9</sup> *Id.* On waiver standards generally, *see Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*") ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest," citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) ("*WAIT Radio*").

service) is not sufficient, by itself, to warrant a waiver.”<sup>10</sup> Rather, such a proposal “is presumptively contrary to the public interest.”<sup>11</sup> In this regard, the Commission has stated that:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.<sup>12</sup>

Prieto does not request waiver of this policy, stating only that “Lawrenceville is a much larger community than Grayson, but . . . is lacking any audio transmission facility,” and that “the much larger community of Lawrenceville plainly is more deserving of an audio transmission service than the smaller community of Grayson.”<sup>13</sup> While Lawrenceville is unquestionably the larger community, and would be preferred if this were a comparison between proposals for new service, this in and of itself does not justify a change of community of license that would deprive the community of Grayson of a radio service on which it has come to rely for programming serving its needs. The Commission has held that the fact that a licensee proposes to remove a station to a larger community does not by itself justify the removal of a smaller community’s sole local broadcast service.<sup>14</sup> However, this is the only public interest justification proffered by Prieto in support of her application.

Therefore, we cannot find, on the existing record in this case, that there are sufficient public interest factors to offset the expectation of continued local service at Grayson, Georgia. Accordingly, we cannot find that the public interest, convenience, and necessity will be served by Prieto’s proposal. Therefore, the application of Teresa Prieto, File No. BMJP-20041029AEY, for major modification to change the community of license of station WPLO(AM), Grayson, Georgia, IS DISMISSED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: George L. Lyon, Jr., Esq., Counsel for Ms. Teresa Prieto

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<sup>10</sup> *New Community MO&O*, 5 FCC Rcd at 7097.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Exhibit 1 to Prieto Application, Section 307(b) Showing.

<sup>14</sup> *See, e.g., Potts Camp and Saltillo, Mississippi*, Memorandum Opinion and Order, 16 FCC Rcd 16116 (2001) (denying relocation of sole local service at a town of 483 to a town of 1,782).